



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

May 18, 2011

Mr. Tuan Nguyen
Staff Attorney
City of Houston
1200 Travis
Houston, Texas 77002-6000

OR2011-07011

Dear Mr. Nguyen:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 422408.

The Houston Police Department (the "department") received a request for offense report number 038714011-L. The department claims that the requested information is excepted from public disclosure under section 552.108 of the Government Code.

Pursuant to section 552.301(b), a governmental body must ask for a decision from this office and state the exceptions that apply not later than the tenth business day after the date of receiving the written request. Further, pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. The department received the present request for information on April 6, 2011. The department did not request a decision from this office and submit the required information until April 28, 2011. Consequently, the department failed to comply with section 552.301(b) and section 552.301(e) of the Government Code.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to comply with section 552.301 results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a

governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.—Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). This office has held that a compelling reason exists to withhold information when the information is confidential by another source of law. *See* Open Records Decision No. 150 (1977) (presumption of openness overcome by a showing that the information is made confidential by another source of law or affects third party interests). Section 552.108 is a discretionary exception that may be waived and thus is not a compelling reason to overcome the presumption of openness. Open Records Decision No. 177 (1977) (governmental body may waive statutory predecessor to section 552.108). Accordingly, the department may not withhold the information under section 552.108. However, section 552.130 does make information confidential and therefore is a compelling reason for purposes of section 552.302.

Section 552.130 excepts from public disclosure information relating to a Texas driver's license. Gov't Code § 552.130. Thus, the department must withhold the Texas driver's license number we have marked.¹ However, we note section 552.130 protects personal privacy. Thus, the requestor has a right of access to his own Texas driver's license number under section 552.023, which provides a person has a special right of access to information held by an agency that relates to that person and is protected by laws intended to protect that person's privacy interest. *Id.* § 552.023.

In summary, the department must withhold the Texas driver's license number we marked under section 552.130 and release the remainder.²

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

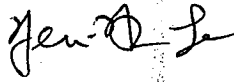
This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.oag.state.tx.us/open/index_orl.php, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public

¹We note this office issued Open Records Decision No. 684 (2009), a previous determination to all governmental bodies authorizing them to withhold ten categories of information, including a Texas driver's license number under section 552.130 of the Government Code, without the necessity of requesting an attorney general opinion.

²Because the requestor has a special right of access to this information under section 552.023(b), if the department receives a future request for this information from an individual other than the requestor or his authorized representative, the department should again seek our decision.

information under the Act must be directed to the Cost Rules Administrator of the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read 'Yen-Ha Le', with a stylized flourish at the end.

Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/em

Ref: ID# 422408

Enc: Submitted documents

c: Requestor
(w/o enclosures)